

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**February 13, 2008**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case:	Personnel Security Hearing
Date of Filing:	July 13, 2007
Case Number:	TSO-0515

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

**I. Background**

The individual is employed by the Department of Energy (DOE) and held an access authorization at the request of the agency. In 2004, DOE came into possession of derogatory information regarding the individual's drug use. The local security office (LSO) conducted a Personnel Security Interview (PSI) with the individual in August 2006 and consequently suspended his access authorization ("security clearance" or "clearance").

In June 2007, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (June 6, 2007). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (k), and (l) (Criteria K and L). Criterion K is invoked when a person has allegedly trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances except as prescribed or administered by a physician or as otherwise authorized by Federal law. 10 C.F.R. § 710.8 (k). DOE invoked Criterion K because the individual admitted smoking marijuana between 1992 and 1998 while attending college and law school. Further, in July 2002, the individual smoked marijuana at a weekend party and tested positive for drugs later that week during a random drug test.

Criterion L is concerned with information in the possession of DOE that indicates that the individual has engaged in unusual conduct and is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy or which furnished reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. 10 C.F.R. § 710.8 (l). With respect to Criterion L, the Notification Letter refers to the following derogatory information

that raises concerns about the individual's honesty, reliability and trustworthiness: his violation of a drug certification signed in 2000 by marijuana use in July 2002, failure to report his 2002 drug use to DOE security at the time that it occurred, an admission that he was aware of DOE policy regarding the use of drugs and that he knew he held clearances from two agencies, and reluctance to be forthcoming with his management about his use of illegal drugs in July 2002.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE counsel called a personnel security specialist as the LSO's only witness. The individual, who was represented by counsel, testified on his own behalf and elected to call five other witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "App. Ex."

## II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that such a grant would not endanger the common defense and security

and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

### **A. Findings of Fact**

The individual attended college and law school from 1992 through 1998. During that time, he admitted using marijuana between 15 and 20 times. Ex. 12 (2000 PSI) at 14; Tr. at 53-54. Upon graduation in 1999, he was hired by DOE into a program that allowed him to rotate through different agencies. 2000 PSI at 7. DOE requested a clearance for the individual and during the subsequent investigation into his background, the individual disclosed his previous drug use in an October 1999 QNSP and during a September 2000 personnel security interview. Notification Letter at 3-4; Ex. 10. The individual attached a signed statement to his QNSP explaining that he had stopped using marijuana. Notification Letter at 4. At this time, he was living with his fiancée. 2000 PSI at 20. During the PSI, the individual told the LSO that he stopped smoking marijuana because it could affect his membership in the bar, because he did not think that public servants should be using drugs, and because he had matured. *Id.* at 21-22. The individual was warned that DOE does not allow the use of any illegal drug while holding a clearance, and he agreed to sign a drug certification form. *Id.* at 25-26; Ex. 11. Based on the drug certification and the individual's apparently sincere and repeated statements that he would no longer use illegal drugs, the DOE resolved the issue of previous drug use and granted the individual a clearance on September 4, 2000. Ex. 10.

In July 2001, the individual accepted a position with another agency ("Agency A" or "second agency"). Ex. 3 (2006 PSI) at 23. His DOE clearance was terminated in July 2001. Ex. 4. In May 2002, the second agency requested that his DOE clearance be reinstated for a new assignment, and he was granted a reciprocal clearance. Ex. 4; 2006 PSI at 48; Notification Letter. In mid-July 2002, the individual went on an overseas business trip and returned with severe gastrointestinal pain and diarrhea. 2006 PSI at 13-14; Tr. at 63. He visited a doctor on July 26, 2002, and was tested for parasites and other conditions, but the test results were negative. App. 1. The individual continued taking an over-the-counter medicine for his diarrhea, but it was not effective and the condition continued.

On July 27, 2002, the individual was experiencing such severe diarrhea that he was visiting the bathroom every half hour. Tr. at 133. According to the individual, he decided to attend a party that night in order to get his mind off of his illness. *Id.* at 120. After arriving at the party, he was informed that some of the guests were smoking marijuana in a back room. The individual had experienced relief from stomach discomfort in the past by smoking marijuana, so he decided to self-medicate with the drug that night. He went to the room where the drugs were being used and he proceeded to smoke marijuana. He claimed that he was in the room with the marijuana for only five to ten minutes. His then fiancée had accompanied him to the party, but she did not smoke any marijuana. The individual's stomach felt better, but the symptoms returned the next day. 2006 PSI at 22. When he went to work on the following Monday, July 29, 2002, he was notified to report for a random drug test. The individual knew that the test results would be positive and shortly after taking the test, he contacted the administrator of the second agency's substance abuse program

in order to determine how to mitigate the anticipated positive results of the drug test. Tr. at 75; 2006 PSI at 27. The administrator advised him to begin an on-site program of counseling sessions and random drug tests.<sup>1</sup> The individual began attending counseling sessions with the administrator in July 2002. Tr. at 75-78. On August 13, 2002, Agency A informed the individual that they proposed to remove him from his position due to the use of illegal drugs, which the agency considered “evidence of a lack of reliability and trustworthiness that is expected of our employees.” App. 3; Tr. at 84. At that point, his colleagues were aware that he had tested positive for marijuana use. Tr. at 85.

In August 2002, Agency A initiated an administrative inquiry into the incident. App. 5. In September 2002, the individual and the agency signed a two year “Last Chance Agreement.” Ex. 5. The Last Chance Agreement memorialized the agency’s commitment to hold a decision on his proposed removal in abeyance while the individual participated in the rehabilitation program approved by the administrator. *Id.* Under the terms of the Agreement, any positive drug test would result in immediate dismissal. *Id.* He attended sessions with the counselor between July 2002 and April 2004, and took eight to 10 additional random drug tests, all of which were negative. Tr. at 77-80; 2006 PSI at 34. In November 2002, the medical department of Agency A recommended that the individual be granted a clearance because the individual had sought counseling prior to receiving his positive results, was cooperative, and showed no pattern of abuse. Ex. 4. At the conclusion of the investigation in December 2002, the agency took no adverse action on his security clearance. App. 7. However, he was notified that his clearance would remain in probationary status for two years (until December 2004) App. 7. The agreement stated that during the two year term, the agency would contact the medical department to monitor his drug rehabilitation efforts. *Id.*

In March 2004, DOE offered the individual a permanent job, and he accepted. App. 8. He asked the administrator if he should reveal the positive drug test to his new DOE supervisor. According to the individual, the counselor advised him not to disclose the incident to DOE because the matter had already been adjudicated at Agency A and because the disclosure could adversely affect his reputation with his new management team. Ex. 2 at 2; 2006 PSI at 35-38. The counselor told the individual that the security files are separate from management’s files. *Id.* In April 2004, he returned to DOE as a permanent employee. App. 8.<sup>2</sup> His reciprocal clearance with Agency A was terminated and his DOE clearance was reinstated on April 14, 2004. Ex. 4. As part of the employment process at DOE, he completed a QNSP in November 2004, and in that document he disclosed the positive drug test to DOE for the first time. Ex. 7.

In 2005, DOE selected the individual for a two-year, high profile overseas position that required a security clearance. 2006 PSI at 50. In November 2005, Agency A sent DOE a medical clearance form, indicating that after evaluating the individual’s medical condition, Agency A found the individual to have “unlimited clearance for worldwide assignment.” App. 10. In January 2006, he and his wife moved abroad. However, in August 2006, the

---

<sup>1</sup> The administrator was not a medical doctor, but did hold a PhD. He did not testify and we have no information about his field of study.

<sup>2</sup> The individual left Agency A prior to the termination of the Last Chance Agreement.

LSO contacted the individual's supervisor and asked him to have the individual return to this country immediately for a PSI. 2006 PSI at 56; Tr. at 110. The LSO interviewed the individual on August 15, 2006. Tr. at 33. During the interview, the personnel security specialists asked the individual about the marijuana smoking incident in 2002. At the close of the interview, the LSO personnel took possession of the individual's badge. The LSO suspended the individual's clearance on August 18, 2006. Ex. 1. He returned to his overseas post, but was unable to perform his duties without a clearance and three weeks later he had to pack up his family and move back to the United States. Tr. at 113-114.

## **B. DOE's Security Concerns**

Criterion K deals with the use of illegal drugs. Illegal drug use may cause an individual to act in a manner that is inconsistent with the best interests of national security while under the influence of such substances. See Attachment to Memorandum from Assistant to the President for National Security Affairs, "Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information," at 11 (December 29, 2005) (Revised Adjudicative Guidelines). Also, illegal drug use indicates a willingness to ignore the law that could be reflected in the clearance holder's attitude toward security requirements. See, e.g., *Personnel Security Hearing*, Case No. VSO-0448, 28 DOE ¶ 82,816 (2001); *Personnel Security Hearing*, Case No. VSO-0350, 28 DOE ¶ 82,756 (2000). The individual's drug use is well documented in the record, and validates the charges under Criterion K.

As for Criterion L, the LSO alleges that the individual used marijuana while holding a DOE security clearance even though he knew that such conduct was prohibited for those holding a clearance. His use of illegal drugs while acknowledging DOE's policy against the use of illegal substances in all circumstances, especially while holding a security clearance, calls into question the individual's judgment, reliability, trustworthiness and ability to protect classified information. The violation of a written commitment made to DOE as a condition of employment demonstrates an unwillingness to comply with rules and regulations which indicates that he may not properly safeguard protected information. See Revised Adjudicative Guidelines at 8. Thus, the security concern under Criterion L is also valid.

## **C. Hearing Testimony**

### **1. The Individual**

The individual testified that DOE hired him upon graduation in 1999, and that DOE granted him his first security clearance. Tr. at 51-56. As part of the clearance process, he signed a drug certification in September 2000, and he fully understood the consequences of signing the document. *Id.* at 59. He accepted a permanent job at the second agency in 2001. *Id.* at 57.

At the hearing, he described the circumstances that led to his positive drug test. In July 2002, he was travelling overseas, and began to experience severe stomach problems upon his return. Tr. at 120. He went to his doctor, suspecting that he had picked up a parasite, but the test results were negative. He was in severe distress, and had been experiencing

diarrhea for some time. He wanted to get out of the house and take his mind off of his stomach pain, and so he and his fiancée attended a party on the night of July 27, 2002. At the residence, he heard that someone had marijuana in the back room of the apartment, and he visited that room (without his fiancée). He testified that he wanted to smoke marijuana because in the past it had settled his stomach and relieved pain. He was in the room with the marijuana for five to ten minutes. Upon returning to his home that evening, he told his fiancée that he had done something stupid.

On the Monday following the party, he was notified to report for a random drug test, the first he had taken during his employment. Because of his drug use the previous weekend, he knew that the results would be positive and he became very worried. He called the agency substance abuse program administrator prior to receiving the test results in order to determine what he should do next in order to keep his job. Ex. 3 at 29. The administrator recommended that the individual attend counseling sessions, and he began participating in those sessions that month. *Id.* at 33-36; Ex. 8 at 1. In August 2002, he received a letter stating that the agency would conduct an investigation into his drug use. Ex. 3; Tr. at 77. In September 2002, he signed the “Last Chance Agreement” which allowed him to keep his clearance. The individual testified that he was always open about his drug use in his personnel interviews, and that he appreciates that the second agency reinstated his clearance and gave him a second chance. *Id.* at 116. He did not advise DOE about the positive drug test at the time that it happened because he thought that Agency A would transmit the relevant information to DOE and did not know that it was his responsibility to do so. *Id.* at 104.

In March 2004, he was offered a position at DOE. He went through the clearance process and disclosed his 2002 positive drug test. In January 2006, he moved to a position overseas, a job he considered “the opportunity of a lifetime.” *Id.* at 115. However, he was surprised when, in August 2006, he was called back to this country to meet with DOE security. *Id.* at 112. He had considered the issue closed because he thought the issue was resolved. *Id.* Security took his badge and, shortly thereafter, he had to move back to the United States. The individual testified that he has learned many lessons from this incident. He was humiliated by his recall from overseas, but he was very grateful for a second chance at the second agency and worked hard to restore his reputation with his colleagues. *Id.* at 116. The individual testified that he has learned a “life lesson” from this incident and that anyone who holds a clearance is held to a higher standard. *Id.* at 117. He has matured and would not do anything to hurt his family. *Id.* at 118.

## **2. Other Witnesses**

The individual offered the testimony of his wife, his father, a friend, a former supervisor and a current member of his upper management. The individual’s former supervisor at the second agency testified by telephone. *Id.* at 89-97. He stated that he had worked with the individual from 2001 to 2004, and considered him a reliable employee. *Id.* at 96. An upper level manager from his current office also testified and he described the individual as an excellent, reliable employee. *Id.* at 161-173. The manager knew that the individual had been asked to leave his position abroad because of a drug-related issue and he was shocked by the incident because it seemed out of character. *Id.* at 165. Despite the

gravity of the individual's mistake and his poor judgment, he still considers the individual reliable and trustworthy. *Id.* at 172-173. They had worked on projects together and the individual was an excellent employee. Even knowing that the individual smoked marijuana after signing a drug certification, he still trusts the individual. *Id.* at 173.

The individual's father testified about his son's character. Tr. at 148-156. He found out about his son's positive drug test in 2006 when the individual returned to the United States for his PSI. The son had disclosed his use of marijuana to his father in 1999 when he completed his QNSP, and his father was very disappointed when he learned of his son's drug use during college. However, he encouraged his son to complete the questionnaire truthfully. The father had never seen any sign that his son used drugs. He knows that his son was humiliated to leave his position overseas, but thinks this activity was an aberration and does not believe it has happened again. He believes that the incident in July 2002 was the only time that his son had used drugs since 1998.

The individual's wife, whom he married in October 2002, testified at the hearing. Tr. at 131-142. In July 2002, they were engaged and living together. The individual had returned from a trip overseas with severe stomach problems, bloating and gas. *Id.* at 133-134. He had visited a doctor, who found nothing wrong and so the individual took an over-the-counter remedy. She testified that on the night of the party, he was in the bathroom every half hour. They then went out in order to take his mind off of the illness. *Id.* He told her later that he had smoked marijuana at the party, and she told him that she did not approve and that there was no room for drugs in their future family life. She described him as "very ashamed" that night. *Id.* at 136. The individual's wife stated that the remainder of the year (after the positive drug test) was a very emotional time for the couple. The individual knew he had made a big mistake, and did not sleep or eat well. They were very upset when he was called to the United States in August 2006 for the security interview, and her husband was very emotional. She considered the counseling sessions to be helpful, and testified that the individual is now a different person—he has become more mature and responsible. *Id.* at 145.

A friend of the individual testified that he has known the individual for 20 years. Tr. at 177-185. He has seen the individual once or twice a week over the last five years, visits his home, and they sometimes go out socially. He has never seen the individual use drugs, although the individual had disclosed his drug use to the friend. *Id.* at 178. The individual told the friend about the 2002 incident very shortly after it happened. They discussed his stomach problem, and the individual complained about his discomfort. He feels that the individual has learned from his mistake and does not believe that the individual has used drugs since that time, although he has not asked. The individual has told his friend that he loves his family. The witness described the individual as very responsible, honest and unlikely to use drugs again. *Id.* at 181-183.

## **D. Mitigation of Security Concerns**

### **1. Criterion K – Drug Use**

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation from the use of illegal substances. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). However, in the instant case, the individual was not evaluated by a DOE consultant psychiatrist, no mental health professional testified for either party, and there is no diagnosis of substance abuse or dependence. Therefore, I must rely on the record and my observations at the hearing, and make a common-sense judgment on this matter as directed by 10 C.F.R. § 710.7(c). After carefully reviewing the record and the Revised Adjudicative Guidelines, I find that the individual has mitigated the security concerns regarding his use of marijuana for the following reasons. First, the individual has demonstrated his intent not to use drugs in the future. See Guideline H, ¶ 26 (b). The individual's witnesses and the individual himself credibly testified that he has abstained from the use of illegal substances in the five years prior to the hearing. He has also disassociated himself from friends and acquaintances that use drugs. Second, the individual successfully participated in the Last Chance Agreement with Agency A whereby the agency monitored results of additional random drug tests and his progress in counseling sessions. See Guideline H, ¶ 26 (d). There is no evidence that he had any positive test results or in any other manner failed to meet the requirements of the agreement. Tr. at 103. That agency also gave him an unlimited medical clearance for worldwide duty. App. 10.

In summary, the individual has convinced me through his own testimony and that of his witnesses that there is little likelihood that he will use illegal drugs again. His use of marijuana in 2002 had an enormous impact on his career and family life. He was abruptly removed from an exceptional career opportunity and forced to pack up his family and move back to this country on very little notice. He is intelligent enough to realize that his own actions caused his current predicament, and he has been honest enough to admit the same publicly. I am convinced that there is little chance that this behavior will recur. Since the incident, he has married and matured, and that maturity is obvious in his demeanor as I observed at the hearing. For the reasons set forth above, I conclude that the individual has mitigated the Criterion K security concerns in the Notification Letter. See Revised Adjudicative Guidelines at 12.

### **2. Criterion L- Unusual Conduct**

To mitigate the Criterion L concerns, the individual presented the testimony of a friend, family and supervisors, all of whom described the individual as honest, reliable and trustworthy. There are other mitigating factors in the record. First, the individual offered a credible explanation of his failure to notify DOE of the positive drug test at the time that it occurred. Although DOE had hired the individual and granted him his first clearance, after he rotated to the second agency he communicated only with the security personnel at that agency. Even DOE security personnel confirmed that the second agency should have notified DOE of the positive drug test when it occurred. Tr. at 37. My review of the record



has determined that, contrary to the allegation in the Notification Letter, the individual did not understand exactly what clearance(s) he held, when they were in effect, and whether he held two clearances simultaneously. *Id.* at 128-129; 2006 PSI at 9-11, 47-48.<sup>3</sup> Thus, I find that the individual's assumption that the second agency would transmit all relevant information pertaining to his clearance to DOE was reasonable because that had been the customary practice of both organizations. I further note that when the individual re-applied for a clearance with DOE, he disclosed the entire incident in his October 2004 QNSP. Ex. 7. Second, the individual obtained counseling to alleviate one of the factors that caused his untrustworthy, unreliable behavior—his drug use.<sup>4</sup> See Guideline E, ¶ 17(d). That behavior is unlikely to recur—he is more mature, he has married and had a child, and he has suffered substantial humiliation and career disappointment. He no longer associates with individuals who use drugs. See Guideline E, ¶ 17(g). Finally, this incident was adjudicated positively by the second agency when that agency investigated the incident, entered into a “Last Chance Agreement” with the individual, monitored his rehabilitation efforts and then decided not to take any adverse action against his clearance. Ex. 5, App. 7; Tr. at 103.

There are also negative factors in the record that must be considered. First, although the individual has been honest with DOE in discussing his drug use after he tested positive for marijuana, he did not come forward voluntarily with the information and was not sure that he would have, absent the positive test results. 2006 PSI at 39, 59-61. See *Personnel Security Hearing*, Case No. TSO-0068, 28 DOE ¶ 82,963 (2004) (security concern mitigated by self-report); *Personnel Security Hearing*, Case No. VSO-0313, 27 DOE ¶ 82,835 (2000) (security concern mitigated by self-report). The individual was also very reluctant to disclose to his family or colleagues the reason for his abrupt return from overseas. Second, the individual displayed an unwillingness to comply with rules and regulations when he smoked marijuana in 2002. The individual admitted that he knew that Agency A prohibited its employees from using illegal drugs. 2006 PSI at 25-26. He also knew that smoking marijuana was against the law. He had furnished a written statement to DOE as a supplement to his October 1999 QNSP indicating that he would avoid future drug use and exposure to drugs, and he stated the same in his 2000 PSI. See Notification Letter at 4; Ex. 12. Nonetheless, when he arrived at the party and discovered that some guests were smoking marijuana, he did not leave the premises, as he had promised to do. See, e.g., *Personnel Security Hearing*, Case No. TSO-0530, 29 DOE ¶ \_\_\_\_\_ (January 3, 2008) (security concern mitigated because individual did not knowingly place himself around drug users). Instead he displayed questionable judgment when he sought out the room where the drug use was occurring and then went into the room to smoke marijuana. See Revised Adjudicative Guidelines, ¶ 16. Third, because my recommendation must be based on common-sense judgment, I question the individual's account of the circumstances leading up to his positive test results. It defies logic that a person suffering

---

<sup>3</sup> Because I find that the individual did not understand that he still held a DOE clearance at the time of his marijuana use, it might be argued that the individual did not knowingly violate the drug certification he signed in 2000 in which he promised not to use any illegal drug while holding a DOE clearance. See *Personnel Security Hearing*, Case No. TSO-0324, 29 DOE ¶ 83,038 (2007); *Personnel Security Hearing*, Case No. VSO-0307, 27 DOE ¶ 82,837 (2000), *aff'd* (OSA 2000). Notwithstanding, for reasons explained further below, I find that unresolved concerns remain regarding the individual's trustworthiness, judgment and reliability.

<sup>4</sup> Unfortunately, we have no information about the counseling sessions other than the testimony of the individual.

such severe diarrhea that he visits the bathroom every half hour would decide to leave the comfort of his home and go to a party. The individual also asks me to believe that although he abstained from illegal drugs for three years (1999-2002), he was selected for a random drug test two days after the first and only time that he relapsed. This series of events is possible, but strains credulity. He had never been tested for drugs prior to July 2002, so we have no record of negative drug tests to support his claim of abstinence between 1999 and 2002. His wife testified that she knew of his drug use prior to their marriage (in October 2002) and did not approve, but she did not insist that he stop until they were engaged. Fourth, the individual's decision to self-medicate with an illegal drug is a further display of questionable judgment. Such conduct could create a vulnerability that subjects the individual to exploitation, manipulation or duress, as shown by his initial reluctance to disclose the true nature of his security problem to his family and management. See Revised Adjudicative Guidelines, ¶ 16(e). Finally, the individual is an attorney, and had convinced the LSO in 2000 that he stopped smoking marijuana in 1998 because "I just didn't think it was lawyerly to be doing that at any point any longer." 2000 PSI at 21. This statement influenced the LSO to grant a clearance to the individual. He knowingly broke the law that he had taken an oath to uphold. Therefore, after reviewing the evidence in the record, I conclude for the reasons set forth above that the individual has not mitigated the Criterion L security concerns.

## **II. Conclusion**

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (k), and (l). The individual has presented adequate mitigating factors for Criterion K that alleviate the legitimate security concerns of DOE security as regards that criterion. However, the individual has not sufficiently mitigated the concerns that gave rise to the charge of Criterion L. In view of that criterion and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: February 13, 2008

